IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

MFA.No. 1175 of 2000()

OPMV.1382/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA .

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APPELLANT: PETITIONER

MARIYAKUTTY, W/O.ABRAHAM,
AMBAZHACHALIL HOUSE,
ELANGAVAM KARA, VARAPETTY VILLAGE,
KOTHAMANGALAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: RESPONDENTS
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1. P.V.MARKOSE, S/O.VARGHESE,
PUTHIAKUNNEL HOUSE,
MARADY KARA, MARADY VILLAGE,
MUVATTUPUZHA TALUK.

2. CHACKO MATHAI, S/O.CHACKO,
PERUMBANKUDIYIL HOUSE,
PINDIMANA, KOTHAMANGALAM.

2. THE ORIENTAL INSURANCE CO.LTD.,
KOTHAMANGALAM.

BY ADV. SRI.P.V.JYOTHI PRASAD - R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1175 OF 2000

Dated 10th July, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner met with a motor accident by which she sustained serious injuries. She claimed a compensation of Rs.3,50,000/=. The Tribunal awarded a total compensation of Rs.83,750/=. Only quantum of compensation is disputed in this appeal. Negligence of the driver of the vehicle insured by the third respondent insurance company and it's liability etc. are not disputed. Therefore, we are considering only the quantum of compensation in this appeal. According to the appellant, her monthly income was Rs.3,000/=. Tribunal has taken only the notional income of Rs.1,250/= as mentioned in the second schedule. The accident occurred on 5.2.1994. It is pointed out that she was running a rubber nursery. Apart from the above, it was further argued that service of house wife in the home cannot be brushed aside and, therefore, it is contended that fixation of Rs.1,250/= as monthly income is too meagre. However, in the absence of data, we are not increasing the assessment of monthly income. With regard to the injuries sustained by her, the Tribunal has considered the matter in detail. The appellant was examined as PW2. Her injuries were considered in paragraph 27 of the

award as follows:

> "27. PW2 has proved Exts.A11 to A17 to substantiate the claim. Ext.A11 is the certified copy of the wound certificate issued from Medical College Hospital, Thrissur wherein the injuries sustained by the petitioner in the accident are described as abrasion on the left wrist joint, abrasion over left side of mandible and fracture shaft of left humerus. Ext.A12 is the discharge card issued from Elite Mission Hospital, Thrissur wherein it is found that the petitioner was admitted as inpatient from 5.2.94 to 11.2.94. The diagnosis noted therein is minor head injury, fracture shaft of left humerus with radial nerve palsy, and fracture neck of right scapula. It is also noted therein that C.T.head taken which showed brain oedema. Ext.A13 is the discharge card issued from Dhanya Mission Hospital, Chalakudy wherein it is noted that the petitioner was admitted in that hospital on 11.2.94 and discharged on 3.3.94. It is also noted therein that operation was done to the petitioner from thereon 21.2.1994. The clinical findings were noted therein as head injury, cerebral concussion, fractures to left humerus, left clavicle and to right scapula and radial nerve injury at radial groove (left). Ext.A14 is the scanning report issued from Elite Mission Hospital on 8.2.94 wherein the impression noted as "CT study of the brain appears to be within normal limits. Suggested clinical correlation". It is also noted therein that a subgaleal haematoma is seen overlying the right fronto-parietal area. Ext.A15 is the disability certificate issued on 31.3.99 by Dr.Jose Kurian Kattukaran wherein it is noted that the petitioner was examined on that day and found that she is having non union of left clavicle fracture with pain and tenderness of the fracture site with

> limitation of movements of left shoulder joints and loss of sensation of left radial nerve, weakness of left fingers, weakness of grip of left hand and that she is having difficulty to lift weight, carry weight to throw, to rotate left forearm, to remove dress and to pull or push with left hand etc. The permanent disability was also assessed at 29% being a house wife."

Again at paragraph 28 the Tribunal observed as follows.

> "28. PW3 is Dr.Jose Kurian who issued the disability certificate marked as Ext.A15 wherein the permanent disability of the petitioner was assessed at 29%. It is deposed by PW3 that the fracture of left clavicle is not united and there is non-union, that she had limitation of movements of shoulder, that loss of sensation of left radial nerve distribution, that there is weakness of the extensors of left fingers, and that there is weakness of grip of left hand which is due to radial nerve injury left side. Nothing has been elicited in the cross examination to PWs 2 and 3 either to disbelieve them or to discard the above said documents as a whole."

The disability certificate was proved by PW3 doctor. But, after saying that there is no material to discard the evidence of doctor, compensation was calculated only for 20% disability and compensation granted for disability and loss of earning power was Rs.45,000/=. We are of the opinion that compensation for 29% disability ought to have

been granted by the Tribunal. If the disability is taken as 29%, compensation payable will be Rs.1,250 x 12 x 15 x 29/100 = 65,250/=. Therefore, the claimant will be entitled to an additional amount of Rs.20,250/= under that head. Even though it was argued that only actual bills produced were reimbursed etc., we are of the opinion that considering the total compensation awarded, no enhancement need be given under other heads. The additional amount of Rs.20,250/= shall be deposited by the third respondent insurance company with 7% interest from the date of application till its deposit.

The appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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